

FILED

IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF TEXAS
EL PASO DIVISION

OCT 17 2008

CLERK, U.S. DISTRICT COURT
WESTERN DISTRICT OF TEXAS
BY _____ DEPUTY CLERK

ROBERT PETERSON,
Plaintiff,

v.

SAM'S EAST, INC. d/b/a SAM'S CLUB,
COSCO HOME & OFFICE PRODUCTS
and DOREL JUVENILE GROUP, INC.,
Defendants.

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EP-07-CV-258-PRM

VERDICT FORM

PART I

QUESTION I

WAS THERE A DESIGN DEFECT IN THE LADDER AT THE TIME IT LEFT THE POSSESSION OF DOREL JUVENILE GROUP, INC. THAT WAS A PRODUCING CAUSE OF THE INJURY IN QUESTION?

A "DESIGN DEFECT" IS A CONDITION OF THE PRODUCT THAT RENDERS IT UNREASONABLY DANGEROUS AS DESIGNED, TAKING INTO CONSIDERATION THE UTILITY OF THE PRODUCT AND THE RISK INVOLVED IN ITS USE. FOR A DESIGN DEFECT TO EXIST THERE MUST HAVE BEEN A SAFER ALTERNATIVE DESIGN.

"SAFER ALTERNATIVE DESIGN" MEANS A PRODUCT DESIGN OTHER THAN THE ONE ACTUALLY USED THAT IN REASONABLE PROBABILITY—

- (1) WOULD HAVE PREVENTED OR SIGNIFICANTLY REDUCED THE RISK OF THE OCCURRENCE OR INJURY IN QUESTION WITHOUT SUBSTANTIALLY IMPAIRING THE PRODUCT'S UTILITY; AND
- (2) WAS ECONOMICALLY AND TECHNOLOGICALLY FEASIBLE AT THE TIME THE PRODUCT LEFT THE CONTROL OF DOREL JUVENILE GROUP, INC. BY THE APPLICATION OF EXISTING OR REASONABLY ACHIEVABLE SCIENTIFIC KNOWLEDGE.

PLEASE ANSWER YES OR NO.

ANSWER:

Yes

QUESTION II

WAS THERE A MANUFACTURING DEFECT IN THE LADDER THAT WAS A PRODUCING CAUSE OF THE INJURY IN QUESTION?

A "MANUFACTURING DEFECT" WITH RESPECT TO THE LADDER MEANS THE SPECIFIC LADDER DEVIATED IN ITS CONSTRUCTION OR QUALITY FROM ITS SPECIFICATIONS OR PLANNED OUTPUT IN A MANNER THAT RENDERED IT UNREASONABLY DANGEROUS. THIS REQUIREMENT IS SEPARATE FROM, AND IN ADDITION TO, THE REQUIREMENTS THAT THE PRODUCT WAS DEFECTIVE WHEN IT LEFT DOREL JUVENILE GROUP, INC.

PLEASE ANSWER YES OR NO.

ANSWER: yes

QUESTION III

WAS THERE A DEFECT IN THE MARKETING OF THE LADDER AT THE TIME IT LEFT THE POSSESSION OF DOREL JUVENILE GROUP, INC. THAT WAS A PRODUCING CAUSE OF THE INJURY IN QUESTION?

A "MARKETING DEFECT" WITH RESPECT TO THE PRODUCT MEANS THE FAILURE TO GIVE ADEQUATE WARNINGS OF THE PRODUCT'S DANGERS THAT WERE KNOWN OR BY THE APPLICATION OF REASONABLY DEVELOPED HUMAN SKILL AND FORESIGHT SHOULD HAVE BEEN KNOWN OR FAILURE TO GIVE ADEQUATE INSTRUCTIONS TO AVOID SUCH DANGERS, WHICH FAILURE RENDERED THE PRODUCT UNREASONABLY DANGEROUS AS MARKETING.

"ADEQUATE" WARNINGS AND INSTRUCTIONS MEAN WARNINGS AND INSTRUCTIONS GIVEN IN A FORM THAT COULD REASONABLY BE EXPECTED TO CATCH THE ATTENTION OF A REASONABLY PRUDENT PERSON IN THE CIRCUMSTANCES OF THE PRODUCT'S USE; AND THE CONTENT OF THE WARNINGS AND INSTRUCTIONS MUST BE COMPREHENSIBLE TO THE AVERAGE USER AND MUST CONVEY A FAIR INDICATION OF THE NATURE AND EXTENT OF THE DANGER AND HOW TO AVOID IT TO THE MIND OF A REASONABLY PRUDENT PERSON.

AN "UNREASONABLY DANGEROUS" PRODUCT IS ONE THAT IS DANGEROUS TO AN EXTENT BEYOND THAT WHICH WOULD BE CONTEMPLATED BY THE ORDINARY USER OF THE PRODUCT WITH THE ORDINARY KNOWLEDGE COMMON TO THE COMMUNITY AS TO THE PRODUCT'S CHARACTERISTICS.

PLEASE ANSWER YES OR NO.

ANSWER: yes

IF YOU HAVE ANSWERED "YES" TO ANY OF THE PREVIOUS QUESTIONS, THEN ANSWER THE FOLLOWING QUESTION. OTHERWISE, DO NOT ANSWER THE FOLLOWING QUESTION.

QUESTION IV

WHAT SUM OF MONEY, IF PAID NOW IN CASH, WOULD FAIRLY AND REASONABLY COMPENSATE ROBERT PETERSON FOR HIS INJURIES, IF ANY, THAT RESULTED FROM THE OCCURRENCE IN QUESTION?

CONSIDER THE ELEMENTS OF DAMAGES LISTED BELOW AND NONE OTHER. CONSIDER EACH ELEMENT SEPARATELY. DO NOT AWARD ANY SUM OF MONEY ON ANY ELEMENT IF YOU HAVE OTHERWISE, UNDER SOME OTHER ELEMENT, AWARDED A SUM OF MONEY FOR THE SAME LOSS. THAT IS, DO NOT COMPENSATE TWICE FOR THE SAME LOSS, IF ANY. DO NOT INCLUDE INTEREST ON ANY AMOUNT OF DAMAGES YOU FIND.

ANSWER SEPARATELY, IN DOLLARS AND CENTS, FOR DAMAGES, IF ANY. DO NOT REDUCE THE AMOUNTS, IF ANY, IN YOUR ANSWERS BECAUSE OF THE NEGLIGENCE, IF ANY, OF ROBERT PETERSON.

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| a: Reasonable and necessary medical care in the past | \$ <u>92,553.90</u> |
| b: Loss of earning capacity sustained in the past | \$ <u>15,000.00</u> |
| c: Physical pain and mental anguish sustained in the past | \$ <u>100,000.00</u> |
| d: Physical pain and mental anguish that, in reasonable probability will be incurred in the future | \$ <u>150,000.00</u> |
| e: Physical impairment in the past | \$ <u>100,000.00</u> |
| f: Physical impairment which in reasonable probability will be incurred in the future | \$ <u>150,000.00</u> |
| g: Disfigurement in the past | \$ <u>0</u> |
| h: Disfigurement which in reasonable probability will be incurred in the future | \$ <u>0</u> |

PART II

FINALIZATION OF THE VERDICT FORM

PLEASE COMPLETE THE FOLLOWING INFORMATION:

10-17-08
DATE


FOREPERSON